IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1336/1994
(LR's of Jamil Ahmed Vs. RSEB & Ors.)

Date of order : November 1st, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.R. Singhvi, for the petitioners.
Mr. L.M. Lodha, for the respondents.

In this writ petition, the petitioner late Jameel Ahmed has challenged the impugned order dated 04.03.1994 (Annexure-7) whereby the regular pay-scale allowed to the petitioner Late Jameel Ahmed on the post of Blacksmith w.e.f. 1.4.1974 was withdrawn and he was ordered to be fixed in the pay-scale No.1 only.

During the pendency of the writ petition, the petitioner Jameel Ahmed died on 4.2.2007. Thereafter an application was moved by legal heirs of late Jameel Ahmed for bringing them on record. Vide order dated 6.8.2007, the legal heirs of the petitioner late Jameel Ahmed were taken on record and amended cause-title has been filed in this case.

According to the facts inter alia narrated in the writ petition, late Jameel Ahmed was initially appointed in the month of January, 1971 vide Annexure-1 at the rate of Rs.5/- per day and since his appointment late Jameel Ahmed was doing the job of welding in the respondent Board. Number of persons who were working on daily wage basis in different trades were not fixed in regular pay-scale nor they were regularized, therefore, looking to the serious problem in order to resolve the controversy, an agreement was arrived at in between the Rajasthan State Electricity Board and General Secretary, Vidhyut Mandal Majdoor Federation in form 'C' in terms of Section 10-B(I) of the Industrial Disputes Act, 1947. Two persons namely Shri Prithvi Singh and Shri A.C. Sancheti were appointed as Arbitrators in the said arbitration proceedings and award was passed for regularization of the employees working on the work-charged basis in the Board.

In the first part of Award, para 13 and 14 are relevant for the purpose of present controversy, which read as under :

> "13. Towards fixing in the Regular Pay Scales of the technical workmen of the categories/classification mentioned above, creation of corresponding number of posts with due regard to trade and norms prescribed/ to be

prescribed is necessary. It is noted by us that the process of creation of posts is in progress and it would take some time before these are created. We feel that on this account the fixing of technical workmen of the categories/classification mentioned above should not be withheld/delayed. Therefore, for all such employees (Technical workmen) covered by the said categories/classification, supernumerary posts shall be deemed to have been created on the respective dates corresponding to the number of the said employees to be brought on/into regular pay scales. This arrangement of creating supernumerary posts shall also apply to the cases of all those workmen who are due to be fixed in regular pay scale w.e.f. 1.4.1968 on completion of two or more years continuous services upto/ as on 31.3.1968 as already agreed by the parties as per settlement dated 20th of July, 1979 but so far could not be fixed in Regular Pay Scales as in force from time to time for want of creation of posts or to the extent lesser number of posts were created. As and when regular posts are created in terms of the norms of workload etc., corresponding number of supernumerary posts so created for these persons shall be accordingly adjusted.."

14.	Classification (Period of Service)	Date from which Regular Pay Scale to be given.
(iii)	Those who have completed two years continuous service upto/as on 31.3.1974 and have been continuously in Board's Service thereafter.	1st April, 1974

The petitioner was appointed on 03.10.1971, therefore, as per recommendations made by his immediate officer – Asstt. Engineer on the basis of documentary evidence on record, the petitioner was fixed in the pay-scale of Blacksmith-II upon completion of two years of service as on 31.5.1974 w.e.f. 1.4.1974. The petitioner was allowed the benefit of regularization on the post of Blacksmith-II on the basis of recommendations made in the prescribed proforma by Assistant Engineer (C.S.D.I.) R.S.E.B. Jodhpur, in which it was certified on the basis of office record that petitioner was performing work of Welder since his appointment as casual labour, which is placed on record as Annexure-II, which reads as under :

"RAJASTHAN STATE ELECTRICITY BOARD, JODHPUR.

Performa of service particular of workcharged Muster Roll/Daily Rated/Casual workman of the R.S.E.B. for the purpose of Fixation under Award dated 31st May, 1978.

1. Name of circle Construction, Circle Jodhpur.
2. Name of Division/Sub division-Construction sub division I, Jodhpur.
3. Name of Workman and father's name – Jamil Ahamed S/o Jahool Ahamed.
4. Date of birth – 1st July, 1951.
5. Qualification (A) Academic Nil
   (B) Technical s per encloser.
6. Date of first appointment :- 3-10-1971.
7. Trade on which appointed :- Welder (Skilled workmen)
8. Nate of job actually performed (with date) : 1. Welding & fabrication,
   2. Since appointment.
   3.....
   4.....
9. Date of eligibility for regularisation/fixation

	as per award	: 1-4-74
10.	Nature of work performed as on relevant specified date (as per col 9)	: Welding & fabrication since 3-10-71
11.	Rate on which initially appointed	:
	1.Basic Pay	: @5/- per day.
	2.D.A.	
	3.House Rent	
	4.Any other allowance	
12.	Wages as on relevant specified date as on the date (as per coloum 9)	: 240/-
	1. Basic pay	:
	2. D.A.	: 21.60
	3. House Rent	:
	4. Any other allowance	: 12.50
13.	Remarks if any	: Recommended as per enlcoser

Junior Engineer
sub-Office

Assistant Engineer
(C.S.D.I.)R.S.E.B.
Jodhpur.

The petitioner was allowed the benefit of fixation by the Fixation Committee which was constituted by the Board for finalization of the pending cases on 23.12.1989. The said order was withdrawn and cancelled vide order Annexure-4 dated 16.6.1990. Earlier the order dated 16.6.1990 was challenged by the petitioner late Jamel Ahmed by way of filing writ petition before this Court and the said writ petition was allowed and while quashing the order dated 16.6.90, it was ordered that the respondents shall hear the petitioner and thereafter pass appropriate orders in accordance with the law. The said writ petition was decided by this Court on 13.3.1991 thereafter the petitioner was given notice and the petitioner filed his reply to the notice and

apprised the Board that he is entitled for regularization/fixation on the post of Blacksmith-II in accordance with the award passed by Singh-Sanchati Committee so also on the basis of the recommendations made by the Asstt. Engineer but rejecting the petitioner's plea, the Board has passed an order on 4.3.1994 whereby the Bord has withdrawn the order of fixation dated 23.12.1989 by which late Jamel Ahmed was fixed in the pay scale No.3 on the post of Blacksmith-II. The said order is under challenge in this writ petition.

Learned counsel for the petitioner vehemently argued that in this case the petitioner has filed recommendation Annexure-2, which has not been specifically denied by the respondents in reply to para No.7 of the writ petition, the only assertion has been made in the reply by the respondent Board that "the proforma and verification by the then Assistant Engineer seems to be part of the benevolent gesture showing extra consideration though he was not eligible and competent at all." But there is no complete denial with regard to certification made by the Assistant Engineer. Learned counsel for the petitioner has invited my attention towards the certification issued by the Assistant Engineer, which is mentioned in Annexure-2 by which he has categorically stated that as per office record the petitioner is eligible for fixation as per his trade (Welder), and nature of

job already performed by him. It is also certified by the Assistant Engineer under whom the petitioner was working that I have personally verified that the information mentioned above are correct and based as per the record of this Office. Meaning thereby, as per the recommendations made by the Assistant Engineer after due verification from the record, he found that the petitioner was performing duties of Welder, therefore, he has recommended his case for regularization in accordance with the recommendation of Singh-Sancheti Committee.

Learned counsel for the petitioner further argued that there is no documentary evidence placed on record by the respondents showing that the petitioner was not performing duties as Welder, therefore, case of the petitioner was reviewed. According to the counsel for the petitioner, upon perusal of Annexure-R/1 and R/2, minutes of meetings of reviewing committee, it is no where mentioned or discussed that Assistant Engineer has made false information with regard to working of the petitioner as Welder. The reason for not accepting the recommendations of the Assistant Engineer are also not even discussed, therefore, the decision for snatching the right of the petitioner for regularization on the post of Blacksmith-II is totally untenable. As per certificate given by the immediate superior on the basis of the record of the Office that the petitioner

was performing duties as welder fixation committee has rightly granted benefit for the post of Blacksmith-II, which was available at that time. The order impugned of reviewing committee is totally untenable and has no force of law because the reasons mentioned in the order are totally unfounded. More so, the reasons which are mentioned in the order of review of fixation are contrary to documentary evidence which is Annexure-2. Learned counsel for the petitioner has invited my attention towards the judgment rendered by Division Bench of this Court in DB Civil Special Appeal No. 173/1992 (Jawahar Singh Vs. Rajasthan State Electy. Board & Ors.) decided on 29.11.1995 whereby similarly situated persons were allowed the benefit of fixation of pay.

Learned counsel for the non-petitioner Board vehemently argued that according to the Singh-Sancheti Committee, the incumbent who was working as workcharged employee was to be given benefit for the post on which he was appointed and admittedly the petitioner was appointed as casual labour no post was mentioned in the order, therefore, allowing the benefit of fixation as per award of Singh-Sancheti Committee by the fixation committee was erroneous. Therefore, upon review the said mistake was rectified in which there is no illegality. Learned counsel for the non-petitioner vehemently argued that the petitioner was rightly allowed pay-scale No.1 after

recalling the order of fixation on the post of blacksmith and there is no illegality or infirmity in the order impugned. The petitioner was not even entitled for any post because in his initial appointment order, it was mentioned that sanction is hereby granted for casual labours in that order the name of the petitioner was included at Sl. No.3. The fixation Committee in its meeting reconsidered the matter and on the basis of fact that the petitioner was initially appointed as casual labour and he was not given any post at the time of initial appointment, therefore, rightly fixed the petitioner's pay in the pay-scale No.1 and rescinded the order of fixation for the post of Blacksmith-II. Hence, this writ petition deserves to be dismissed. With regard to the judgment cited by learned counsel for the petitioner in DB Civil Special Appeal No. 173/1992 decided on 29.11.1995, it is submitted that the facts of that case is altogether different because in that case the incumbent was provided appointment on a particular post. Therefore, that case is distinguishable from the facts of present case.

I have heard learned counsel for the parties and perused the record of the case.

In this writ petition, it is nowhere stated that the petitioner is not entitled for regularization or fixation in accordance with the Singh-Sancheti

Committee. The only dispute is raised that upon what post the petitioner was to be regularized and for what post benefit of pay scale was to be given to the petitioner. I have perused Annexure-2, which is prescribed proformma prepared for seeking information for the purpose of fixation by the department in pursuance of award. This proformma was prepared by the Board itself and was sent to the respective sub-ordinate officers and information was called in the said proformma. Specific informations were sought for the purpose of fixation and the immediate superior of the petitioner specifically recommended his case for grant of pay-scale after completion of two years of service because he was performing work of Welder. He has specifically certified that on the basis of record Jameel Ahmed is working and performing duties as welder, therefore, he is eligible for fixation/regularization under the award dated 31.5.1978. He has also recommended his case after due verification from the record that incumbent is eligible for fixation on the post of welder as per his trade and nature of job already performed by him. It is very strange that a specific certificate was given by the immediate superior who was taking work from late Jameel Ahmed, then how such certificate can be disbelieved. In the reply of the respondents also, it is nowhere contended that false certificate was given by the Assistant Engineer. It is nowhere discussed in the order of review that the information and

certificate given in prescribed proformma by Assistant Engineer was false. There is no specific denial with regard to performing duty by the petitioner as welder. Therefore, upon the facts and documents, it is obvious that fixation committee has rightly considered the case of the petitioner for grant of fixation/regularization on the post of blacksmith-II – the post which was available in the same trade at the time. It is also obvious that after due application of mind and the recommendations made by the Assistant Engineer with regard to the work performance of the petitioner, the fixation Committee so constituted by the Board rightly allowed the benefit of fixation to the petitioner on the post of Blacksmith-II, which is in the same cadre and trade, therefore, the reason for denial of the benefit to the petitioner on the ground that initially the word casual labour was mentioned in the appointment order does not give any right to the respondents to snatch the benefit of the fixation upon the post of Blacksmith-II to the petitioner, which is already been granted vide office order dated 23.12.1989.

Admittedly, late Jameel Ahmed was appointed in the year 1971 and as per Annexure-2 on the basis of documentary evidence of the Office, he was performing the duties of Welder as such under the Award passed by Singh-Sancheti Committee he was to be considered for fixation and regularization as per performance and

working in particular trade. The post of blacksmith and Welder are in the same trade and cadre. Thus, in my opinion, the fixation committee has rightly passed an order dated 23.12.1989 for fixing the pay of the petitioner on the post of blacksmith II and reasons for rescinding the said benefits are totally contrary to the record of the respondent department. The reasons which are mentioned in Annexure-R/1 and R/2 are totally baseless and contrary to the certificate issued by the Assistant Engineer.

In these circumstances, the order dated 4.3.1994 passed by Superintending Engineer, R.S.E.B. deserves to be quashed. The writ petition is allowed and order dated 4.3.1994 is hereby quashed and order dated 23.12.1989 is restored.

The respondent Board is directed to make fixation of the pay of late Jameel Ahmed as ordered by fixation Committee on 23.12.1989 on the post of Blacksmith-II and pass consequential order. It is further made clear that during the pendency of this writ petition, the petitioner Jameel Ahmed died, therefore, arrears of fixation may be paid to his legal heirs. Further the Board is directed to release pensionary benefits of late Jameel Ahmed after making fixation as ordered by this Court and arrears of pension and other retiral benefits on the basis of last pay fixed of late Jameel Ahmed may also be paid

to legal heirs of late Jameel Ahmed within a period of four months from today.

The writ petition is allowed with no order as to costs.

(GOPAL KRISHAN VYAS), J.

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